IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3573 of 2004
with
SPECIAL CIVIL APPLICATION Nos. 2624,
2627, 2629, 2631, 2633, 2645, 2647 of 2004

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

PANCHMAHAL DISTRICT PANCHAYAT AND ANOTHER
Versus
SALAMBHAI BAVABHAI PARMAR AND ANOTHER

Appearance:
1. Special Civil Application No. 3573 of 2004
MR HS MUNSHAW for Petitioner Nos. 1-2
MR DA SURANI for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 19/08/2004

ORAL JUDGEMENT

1. In this group of Writ Petitions, common questions about the interpretation of the provisions of Section 33C (2) and resultant rights of the employees are involved. Therefore, upon request, they are heard simultaneously and, now, they are being disposed of by this common judgment.

2. The petitioners, Panchayats, are bodies duly constituted under the provisions of the Gujarat Panchayat Act, 1993 and constituted in Panchamahal District of Gujarat State, whereas, respondent No.1 in each petition is the Workman or the Casual Labourer and respondent No.2 is the Mamlatdar of Panchamahal District, being Revenue Recovery Authority. The respondents, in these petitions, filed Recovery Applications under Section 33C (2) of the Industrial Disputes Act, 1947 ("I.D.Act", for short) against the petitioner-authorities before the Labour Court, Godhra, Panchmahal District, being Recovery Application Nos.3 to 10 of 1995, raising the following pleas:

i. That they are working since 1973 on permanent basis and with honesty and integrity;

ii. That they have continuously worked as Workmen for more than 240 days continuously for 5 years;

iii. That, they are, therefore, entitled to full benefits arising out of the Government Resolutions, mainly, relying on the Government Resolution dated 17-10-1988; and,

iv. That they are not paid the benefits that are due and payable under the Resolutions of the Government and the petitioner, Panchayat authorities, are giving them casual and temporary work, depriving them of their rights and monetary benefits, particularly, in view of the Government Resolution dated 17-10-1988.

3. In absence of any written objections and specific opposition before the Labour Court, probably, the attention of the Labour Court was not drawn to the real interpretation of the provisions of Section 33C (2), which has been, time and again, done by this Court as well as, the Hon'ble Apex Court. The Labour Court directed the petitioner-authority to pay each petitioner the salary and other monetary benefits, including that of Leave and Medical Allowance, due and payable to the Casual Workers in terms of the provisions of the

Government Resolution dated 17-10-1988. Being aggrieved by the common order, the petitioner, Panchayat authorities, have come up before this Court by filing this group of petitioners.

4. The learned Advocates appearing for the parties have offered their submissions. They have, also, taken this Court through the relevant record and particularly, the Government Resolution dated 17-10-1988 and also, the material and relevant provisions of the I.D. Act. It appears that the attention of the Labour Court was not properly drawn to the correct and real interpretation of the provisions of Section 33C (1) and (2) of the I.D. Act in the light of the factual profile and the admitted facts.

5. Section 33C of the I.D.Act, 1947 reads as under:

"33C. Recovery of money due from an employer --

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the

said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labourt Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation - In this section, "Labour Court"

includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

6. It could very well be seen from provisions of Section 33C (2) that the appropriate Labour Court can pass order in favour of the workman for the recovery of money or any benefit, which is capable of being computed in terms of money. The plain reading of Section 33C (2) makes it quite evident and explicit that the legal mechanism for redressal of recovery of the dues payable to the labourers against the master or management is designed and devised for speedy recovery of money due from any employer and due and payable to the workman. For the order for recovery of money, amount ought to be shown to have become due and payable from the employer. It may be either under settlement or under an award or under the direction of the Court or under the provisions of Chapter VA or Chapter VB of the I.D.Act. The workman can pursue the remedy under Section 33C without prejudice to any other mode of his right to recovery. Again, there are two inhibitions inscribed and provided under Section 33C: One, that such an application for recovery is to be made within one year from the date on which the money became due to the workman from the employe; and, two, that such an application, however, can be entertained after the expiry of one year, if it is shown to the satisfaction of the authority that the applicant had sufficient cause for not making the application within the said period.

7. The jurisdiction of the Labour Court for passing an order under Section 33C (2) in favour of the workman against the employer for recovery of dues has a purpose and a policy behind it, as, it has a generic procedure for investigation and settlement of industrial dispute and the basis of collective bargaining being already there, this legislative mechanism provides a workman, expeditious and easy and speedy remedy to enforce his individual right under Section 33C of the I.D.Act without recourse to the provisions of Section 10 (1) or without having to wait for the Union to espouse his issue or cause. Section 33C provides both, a forum and a procedure, for computing monetary, as well as, non-monetary benefit in terms of money and further provides machinery for recovery of such claims. It is, therefore, very clear that the workman, who is entitled to be paid, can seek inexpensive and expeditious redressal by invocation of the provisions of Section 33C (2).

8. The jurisdiction of the Labour Court, under Section 33 C (2), obviously, is based on the entitlement or the right being crystallised in favour of the workman either by virtue of a settlement or order of the Court or award of the competent authority under the I.D.Act. The jurisdiction of the Labour Court to pass order under Section 33 C (2) is founded upon two conditions:

i. Upon satisfaction of entitlement and right of an employee or the workman.

ii. Non-fulfilment or non-implementation of such entitlement by the employer.

9. The Labour Court concerned in the impugned award, in each petition, has committed serious error of law as the recovery order is passed under Section 33 C (2) on the hypothesis and a notional premise that each workman is entitled to the benefits of certain rights, monetary, as well as, non-monetary, arising out of the Government Resolution dated 17-10-1988. In the said Government Resolution dated 17-10-1988, the Government has accepted the recommendation of the Committee, appointed in this behalf, for granting requisite and necessary benefits to the casual labourers working in certain departments of the Government. There are several categories provided in the said resolution and there are several conditions incorporated in the said resolution. Unless and until it is, successfully, shown by and upon the investigation of fact, which varies from person to person, as to which category is attracted and what benefit will flow, there cannot be an entitlement of monetary benefit, without proper examination, evaluation and adjudication or by settlement or by award of the competent authority, which is conspicuously absent in this group of petitions.

10. It is an admitted fact that there is no adjudication; there is no Reference under Section 10(1); and, there has been no settlement. There is no investigation of facts even at the Department of the Government. Simply because certain employees assumed certain facts, in such assumption of certain facts being accepted by the Labour Court, treating as crystallised rights arising out of the Government Resolution dated 17-10-1988, the Labour Court, with due respect, in its erroneous, unreasonable and irrational interpretation, granted benefit to each petitioner, and issuance of resultant Recovery Certificate under Section 33C (4) by the Revenue Recovery Officer. It was submitted before this Court, at the time of submission that in each petition, the Recovery Certificate, which is issued by

the Labour Court, is for Rs.52,296/= (Rupees Fifty Two Thousand Two Hundred And Ninety Six Only). The Labour Court, thus, issued the Recovery Certificate in terms of the provisions of Section 33C (4).

11. After having taken into consideration the factual matrix, the relevant provisions of law and the obserations made hereinabove, the Labour Court has made observations as stated hereinabove, the Labour Court has issued the order for recovery of the amount, which is yet not adjudicated or crystallised into the right, as the applicability of the Government Resolution, dated 17-10-1988, is yet to be finalised to the cases of the workmen. The investigation of facts and resultant outcome, upon judicial scrutiny or by settlement or by way of award of any competent Labour Court, has yet not been reached. Therefore, the application for recovery, with the help of Section 33C (2) of the I.D.Act, is misconceived, apart from being premature, and the Labour Court has, thus, committed serious error of law. Therefore, it is to be quashed.

12. Section 3 of the Revenue Recovery Act, 1890 deals with the mode of recovery of public demands by enforcement of process in other districts then those in which they become payable, whereas, Section 4 of the Act deals with the provisions and remedy available to the person denying liability to pay recoverable amount under Section 3. The Act is designed and devised to strengthen and make better provisions for recovering certain public demands. It is not understood as to how reference of this Act is made in the Certificate of Recovery issued by the competent authority.

13. After considering the provisions of the Act, this Court has no hesitation in finding that the said provisions do not apply, to the facts of the present case, and, therefore, legal objection or hurdle in recovery of so-called money or revenue due and payable, has been made. In the present case, a mere issuance of a Resolution, which is `prima-facie' and apparently, applicable to some of the departments of the Government, or even if it is assumed to be applicable, then also, investigation of facts has to be undertaken so as to consider and ascertain as to whether the facts of workmen would attract the benefits flowing out of it, which is totally admittedly absent.

14. After taking into account all the relevant facts and circumstances and the relevant provisions of law, the impugned order for the recovery of the amount against the

petitioner is held to be illegal and is, therefore, hereby quashed and set aside. Of course, it will be open for the respondent-workmen to pursue appropriate legal redressal for the recovery. Petition is, therefore, accordingly allowed. Rule made absolute without any order as to costs.

(J. N. BHATT, J.)

/shamnath